


IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY

HUMBERTO GARCIA and ANN  
HAYDEN, individually and as  
representative of the estate of VIRGINIA  
GARCIA,

Plaintiff

vs.

CITY OF AUSTIN, TEXAS, STANLEY L.  
KNEE and RUDY LANDEROS

Defendants

CIVIL ACTION NO. **A05CA930 SS**

**PLAINTIFFS' ORIGINAL COMPLAINT**

**JURY DEMAND**

TO THE HONORABLE JUDGE OF THE U.S. DISTRICT COURT:

1. Plaintiffs Humberto Garcia and Ann Hayden, individually and as representative of the estate of Virginia Garcia, complain of Defendants City of Austin, Texas, Stanley L. Knee, and Rudy Landeros, and for causes of action would show as follows:

**PARTIES**

2. Plaintiffs are individuals lawfully residing within the State of Texas.

3. Defendant City of Austin, Texas is a political subdivision of the State of Texas located within the Western District of Texas, Austin Division. Said Defendant may be served with process herein by delivery to City Manager Toby Hammett Futrell, 301 West Second Street, Third Floor, Austin, Texas 78701.

4. Defendant Stanley L. Knee is an individual residing in the Western District of Texas, Austin Division, and may be served with process herein at his business address, 715 East 8<sup>th</sup> Street, Austin, Texas 78701-5254. Defendant is sued in his individual capacity.

5. Defendant Rudy Landeros is an individual residing in Western District of Texas, Austin Division, and may be served with process herein at his business address, 715 East 8<sup>th</sup> Street, Austin, Texas 78701-5254. Defendant is sued in his individual capacity.

#### **JURISDICTION**

6. The Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, in that Plaintiff's claims arise pursuant to federal statutes including but not limited to 8 U.S.C. §§ 1373 and 1644 and 28 U.S.C. § 2201, *et seq.*

#### **VENUE**

7. Venue for this action is proper in the Western District of Texas, Austin Division, in that all defendants are residents of or are located within the Austin Division, and in that all or a substantial portions of the acts or omissions complained of herein occurred in the Austin Division.

#### **FACTS**

8. On January 26, 2004, Plaintiffs' daughter, Virginia Garcia, was brutally raped and murdered in the family's Austin, Texas home. These crimes were committed by David Diaz Morales, a Mexican national present within the United States of America in violation of law.

9. Prior to January 26, 2004, Morales had been deported to his home country of Mexico for immigration violations. Morales thereafter unlawfully reentered the United States and established a residence in Austin. Morales' illegal reentry following deportation was a felony offense under 8 U.S.C. § 1326.

10. Prior to January 26, 2004, Morales had previously been arrested by peace officers employed by the City of Austin Police Department for the molestation of a minor child referred to herein as Jane Doe. For reasons that are unknown to Plaintiff, Travis County District Attorney Ronnie Earle's office declined to pursue timely charges against Morales for the molestation of Doe, thus resulting in Morales' release from custody. Earle's office subsequently pursued criminal charges against Morales for molesting Doe only when Morales was charged with the murder of Virginia Garcia.

11. At the time Morales was released from custody he was known by the City of Austin to be a suspected child molester and also known to be present with the United States of America in violation of federal law after having been previously deported. Austin Police Department employees had no option but to release Morales onto the streets of Austin due to the unlawful practices of the Defendants as set forth herein.

12. Upon information and belief, at the time Morales was released from custody he would have been considered a priority for deportation by federal immigration authorities having jurisdiction over the Austin area. Such authorities further had sufficient personnel and assets to pursue immediate deportation of Morales.

13. At all times relevant to Plaintiff's claims the City of Austin, its police department and Defendants Knee and Landeros have established, maintain and enforced an illegal "sanctuary city policy" whereby city employees are prevented or significantly restricted in their ability to communicate with federal law enforcement officials regarding the citizenship and immigration status of persons residing or present within the jurisdictional limits of the City of Austin.

14. By way of example and without limitation, Defendants have promulgated Austin Police

Department General Order B107. As of the date of this Complaint said policy states that police officers are directed to inform persons suspected of being within the United States in violation of federal law that federal immigration authorities will not be "routinely notified." Upon information and belief, the Austin Police Department does not recognize any "non-routine" circumstances under which immigration authorities will be contacted.

15. In addition to the express policy set forth in General Order B107, Defendants further subject police cadets and officers to ongoing and pervasive training and instruction, including direct orders from supervisory personnel, requiring that they not communicate with federal immigration authorities or otherwise cooperate with such authorities in seeking the removal of illegal aliens from the United States of America.

16. The customs, practices and policies complained of herein are not illusory and are enforced by Defendants through the threat of significant adverse employment action against City of Austin employees who do not comply.

17. Defendants Knee and Landeros are the driving force behind the illegal policies of the Austin Police Department. Defendants have personally declined requests for cooperation from federal immigration authorities, citing their "sanctuary city policy." Defendant Landeros has received praise and commendation from the Mexican government due to his extensive efforts to aid and abet the presence of illegal aliens within the City of Austin and to unlawfully shield such persons from federal law enforcement authorities.

18. The customs, practices and policies complained of herein have been adopted by Defendant City of Austin as its official act by persons authorized to act on behalf of said Defendant. Such

customs, practices and policies have further been enforced by Defendants Knee and Landeros in their individual capacities.

19. Defendants have been made aware of the illegality of "sanctuary city policies" since enactment of 8 U.S.C. § 1373, as established in *City of New York v. United States*, 179 F.3d 29 (2d. Cir. 1999) *cert. den'd*, 528 U.S. 1115, 120 S.Ct. 932, 145 L.Ed.2d 811 (2000). Defendants Knee and Landeros lack the discretion to enact or enforce policies in violation of federal law and are thereby not entitled to official or qualified immunity from Plaintiffs' claims.

#### CAUSES OF ACTION

20. The unlawful actions of Defendants as set forth above have directly and proximately caused irreparable harm to Plaintiffs. Defendants' actions threaten further harm to Plaintiffs and persons similarly situated.

21. Plaintiffs seeks a declaration from the Court pursuant to 28 U.S.C. § 2201 that Defendants actions are in violation of 8 U.S.C. §§ 1373 and 1644 and Tex. Const. Art. I, § 3a, and that employees of the City of Austin, including its police department, are entitled to communicate with the U.S. Bureau of Immigration and Customs Enforcement regarding the immigration status of any person without restriction or interference of any form by Defendants.

22. Plaintiffs further seek injunctive relief from the Court prohibiting the institution or continuation of any custom, practice or policy in violation of 8 U.S.C. §§ 1373 or 1644, and permanently enjoining Defendants from prohibiting or in any way restricting the ability of employees of the City of Austin, including its police department, to communicate with the U.S. Bureau of Immigration and Customs Enforcement regarding the immigration status of any person.

**JURY DEMAND**

23. Plaintiffs demand trial by jury pursuant to Fed. R. Civ. P. 38.

**PRAYER FOR RELIEF**


24. Wherefore, premises considered, Plaintiffs pray that upon final consideration of this matter they have judgment against Defendants for:

- a. declaratory judgment that Defendants' actions complained of herein are in violation of 18 U.S.C. §§ 1373 and 1644 and Tex. Const. Art. I, § 3a;
- b. appropriate injunctive relief prohibiting the institution or continuation of any custom, practice or policy in violation of 18 U.S.C. §§ 1373 or 1644;
- c. reasonable and necessary attorneys' fees and expenses; and,
- d. taxable costs of court.

Plaintiffs further pray that they receive such other and further relief to which they may be justly entitled.

Respectfully submitted:

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**ATTORNEYS FOR PLAINTIFFS**